

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DENZELL MAGIC METCALF,

Petitioner,

v.

JOHN DOE, Warden,

Respondent.

Case No. 1:25-cv-0607 JLT SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS AND DIRECTING CLERK OF
COURT TO ENTER JUDGMENT AND
CLOSE CASE

(Doc. 10)

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Denzell Magic Metcalf is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The magistrate judge preformed a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases and observed Petitioner “has only sought administrative relief” and “has not presented his claims to the California courts, including the California Supreme Court, as required by the exhaustion doctrine.” (Doc. 10 at 2-3.) Therefore, the magistrate judge recommended the Court dismiss the petition without prejudice for lack of exhaustion. (*Id.* at 3.)

The Court served the Findings and Recommendations on Petitioner and notified him that any objections were due within 21 days. (Doc. 10 at 3.) The Court advised him that the “failure to file objections within the specified time may result in the waiver of rights on appeal.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Petitioner did not file

1 objections, and the time to do so has passed.

2 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
3 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations
4 are supported by the record and proper analysis.

5 In addition, the Court declines to issue a certificate of appealability. A state prisoner
6 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
7 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
8 U.S. 322, 335-336 (2003). If a court denies a petitioner's petition, the court may only issue a
9 certificate of appealability when a petitioner makes a substantial showing of the denial of a
10 constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must
11 establish that "reasonable jurists could debate whether (or, for that matter, agree that) the petition
12 should have been resolved in a different manner or that the issues presented were 'adequate to
13 deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)
14 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). In the present case, Petitioner did not
15 make the required substantial showing of the denial of a constitutional right to justify the issuance
16 of a certificate of appealability. Reasonable jurists would not find the Court's determination that
17 Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of
18 encouragement to proceed further. Thus, the Court **ORDERS**:

- 19 1. The Findings and Recommendations issued on May 27, 2025 (Doc. 10) are
20 **ADOPTED** in full.
- 21 2. The petition for writ of habeas corpus is **DISMISSED** without prejudice.
- 22 3. The Clerk of Court is directed to enter judgment and close the case.
- 23 4. The Court declines to issue a certificate of appealability.

24
25 IT IS SO ORDERED.

26 Dated: **June 27, 2025**


UNITED STATES DISTRICT JUDGE